



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON, D.C. 20370-5100

CRS

Docket No: 1032-00

27 October 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 4 October 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Marine Corps on 30 August 1974 after more than two years of prior active service. The record reflects that you received nonjudicial punishment and were convicted by a special court-martial. The offenses included larceny on two occasions and failure to obey a lawful order.

Your military record shows that on 20 August 1976 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial due to your inability to perform satisfactory as a Marine as a result of repeated violations of the Uniform Code of Military Justice, additional difficulties with the civilian authorities on traffic offenses, and a current pending felony charge in the State of Florida. Your record also shows that prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that your request was granted and, as a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties

of a punitive discharge and confinement at hard labor. You received an undesirable discharge on 10 September 1976.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and immaturity and the contention that migraine headaches caused the misconduct which resulted in your discharge. However, the Board found these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of the offenses for which you requested discharge and the two prior disciplinary actions. The Board believed that considerable clemency was extended to you when your request to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain when your request for discharge was granted and should not be permitted to change it now. In this regard, while the Board notes that you were treated for headaches, it did not agree that there was any connection between the headaches and the misconduct of record. Therefore, the Board concluded that your discharge was proper as issued and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director